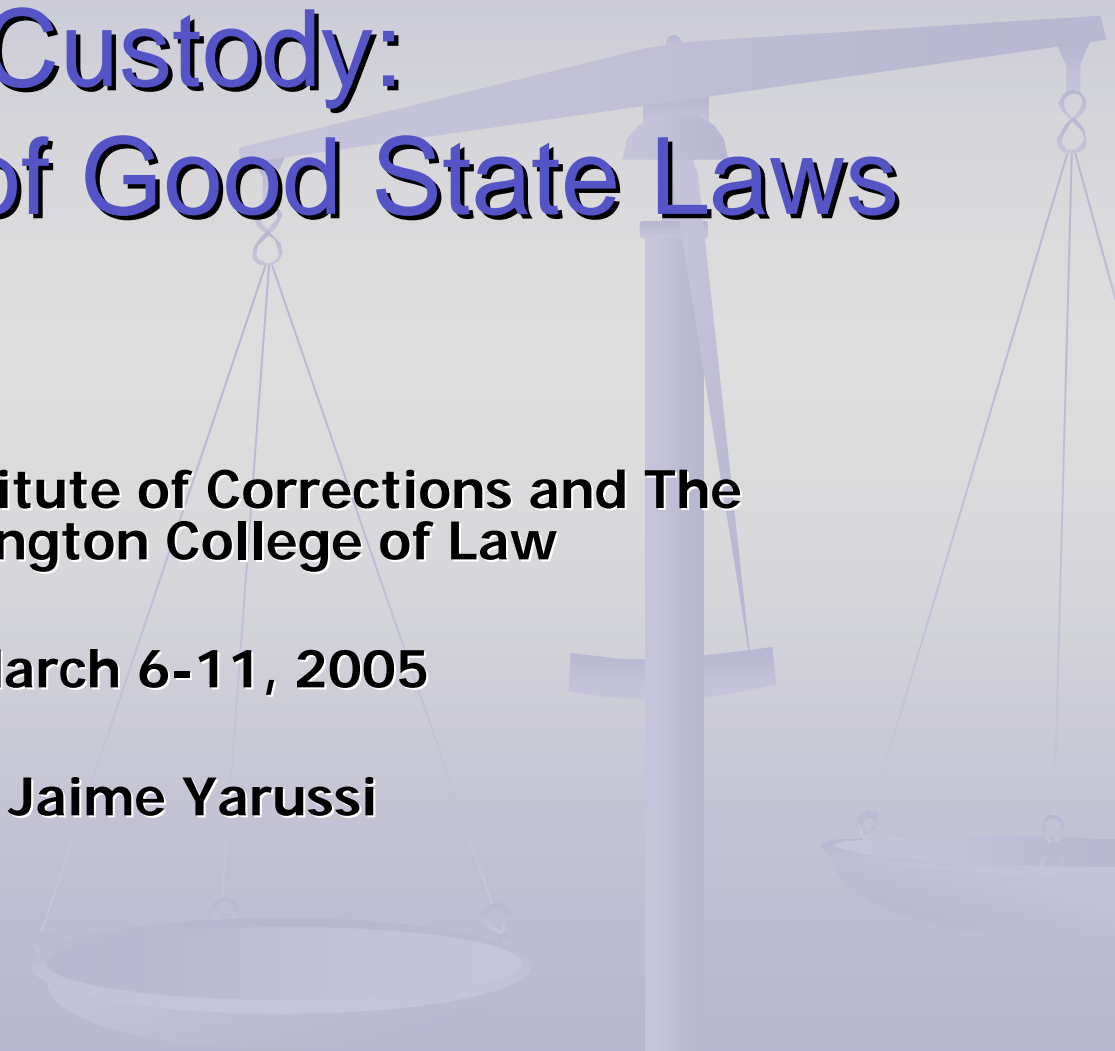


Legal Responses to Staff Sexual Misconduct with Individuals in Custody: Elements of Good State Laws



**Addressing Staff Sexual Misconduct with
Offenders**

**National Institute of Corrections and The
Washington College of Law**

March 12-17, 2006

Enacting a Law

- Context
- Climate
- Proponent



Important Decisions



- What conduct will the law cover?
- Which staff will the law target?
- Will you penalize offender victims?
- What agencies will the law cover?
- What will the penalties be?
- Will this be a strict liability offense?
- Will this be a separate statute?

Coverage



➤ Agency

Secure Confinement
Community Correction Agencies
Juvenile Justice Agencies

Will place matter?

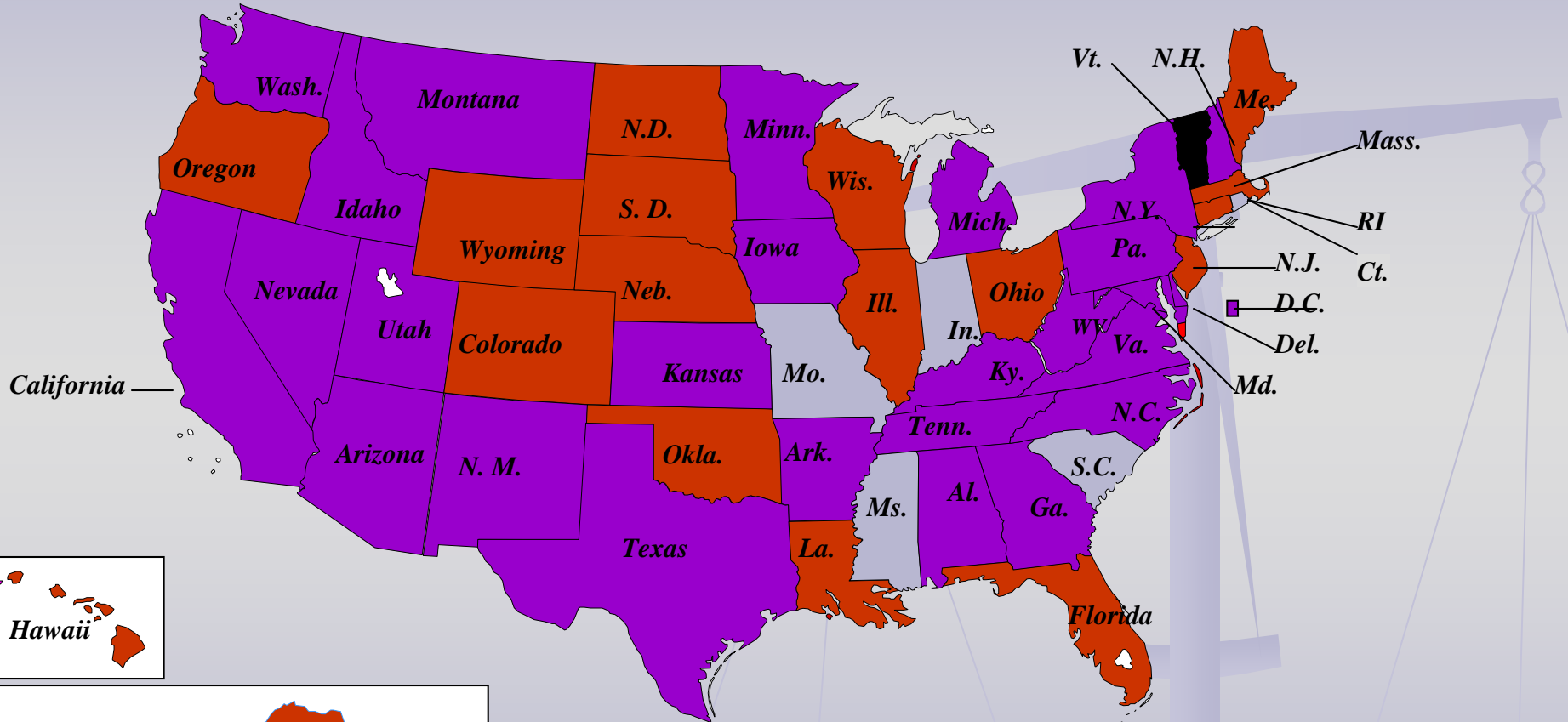
➤ Personnel

Staff
Volunteers
Contractors
Maintenance Workers

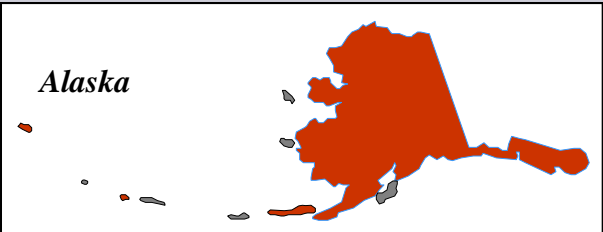
Clergy
Medical Staff
Food Service

State Criminal Laws Prohibiting Sexual Abuse of Juveniles Under Correctional Supervision

National Institute of Corrections/American University, Washington College of Law September 2005



	Juvenile Justice agencies explicitly covered by the law
	Juvenile Justice agencies covered by implication
	Juvenile Justice agencies not covered under the law



Source: September 2005. Brenda V. Smith, The American University, Washington College of Law

Conduct

- **Physical**

 - Penetration
 - Contact

- **Non-Physical**

 - Harassment
 - Over-familiarity



Reporting

- **Duty to Report**
- **False Reports**
- **Retaliation and Coercion**



Defenses

- **Ignorance of Status**
- **Marriage**
- **Consent**



Penalties



➤ Who will be penalized?

- Staff
- Offender Victims

➤ What will the penalty be?

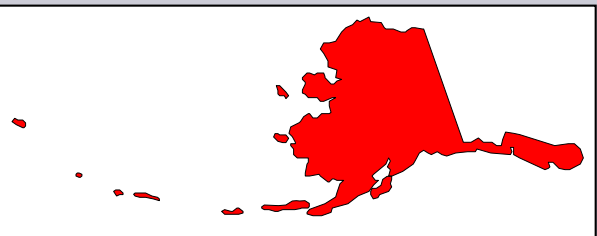
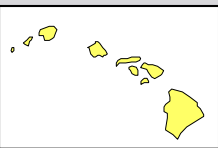
- Felony
- Misdemeanor
- Graduated Sanctions
- Malfeasance in Office/ Loss of License

State Criminal Laws Prohibiting Sexual Misconduct with Offenders in 1990

National Institute of Corrections



	Sexual misconduct in prisons is defined as a misdemeanor.
	Sexual misconduct in prisons is defined as a felony.
	Sexual misconduct in prisons is defined as a felony or misdemeanor, according to the nature and severity of the assault.
	No laws criminalizing sexual misconduct in prisons.



Source: 1997, *Fifty State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners*, Brenda V. Smith, National Women's Law Center.

Optimal Legal Elements

- Coverage
- Conduct
- Reporting
- Defenses
- Sanctions and Penalties



How Does Your State Law Compare with PREA?

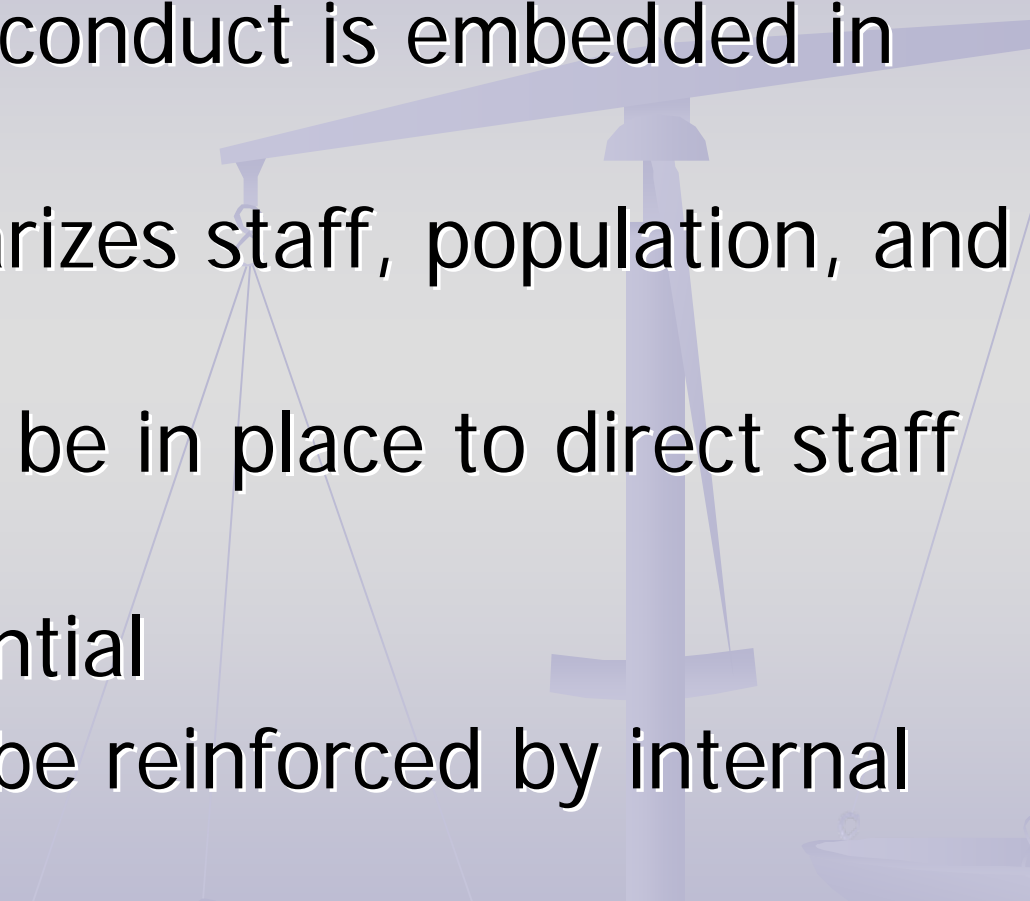
- The term prison is defined as “any confinement facility of a Federal State or local government whether administered by such government or private organization on behalf of such government and includes: a local jail or police lock-up and any juvenile facility used for the custody or care of juvenile inmates.”
- The term inmate is defined as any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary programs
- Rape is defined as carnal knowledge, oral sodomy, sexual assault with an object and/ or sexual fondling

Other Legal Tools

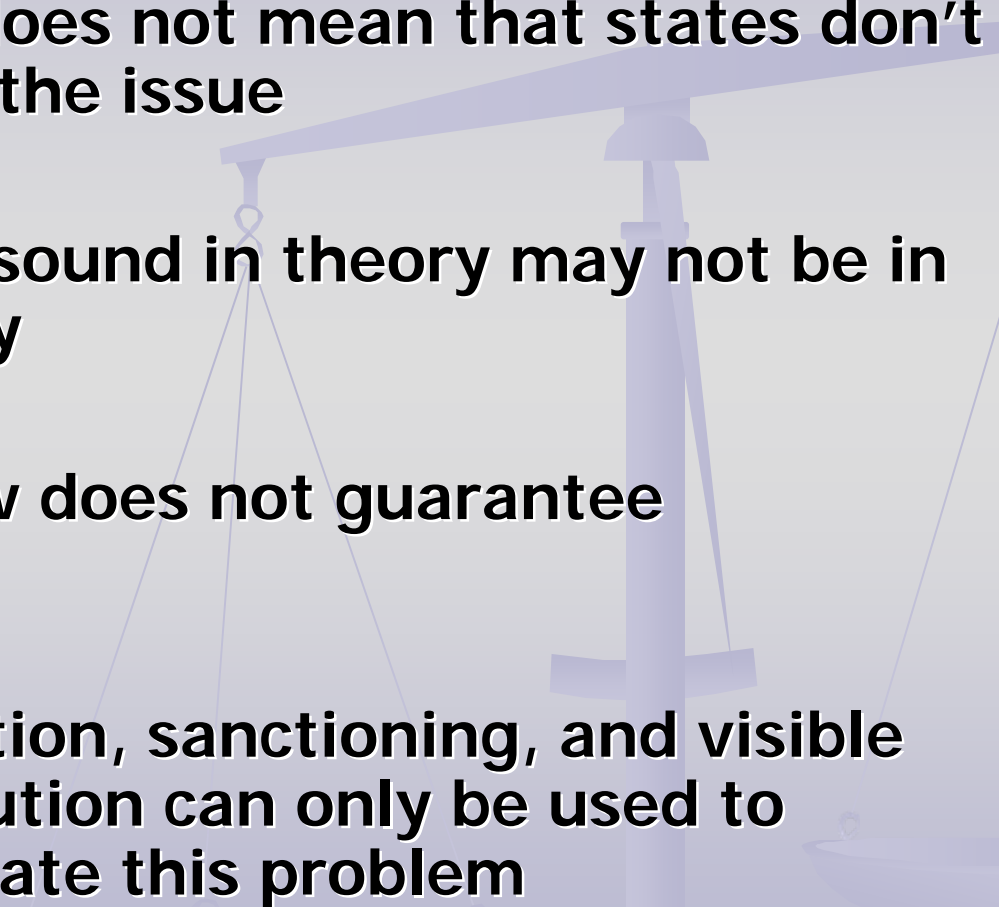
- Statutory Rape
- Mandatory Reporting
- Sexual Assault
- Physical Assault
- Sex-Offender Registry
- Malfeasance in Office
- Licensing
- Vulnerable Victim Statutes



Food for Thought

- Staff sexual misconduct is embedded in culture
 - An incident polarizes staff, population, and leadership
 - Policies need to be in place to direct staff to prevention
 - Training is essential
 - Legislation can be reinforced by internal policies
- 

Things to Remember...

- **Absence of a law does not mean that states don't or cannot address the issue**
 - **Laws that may be sound in theory may not be in practice and reality**
 - **Enactment of a law does not guarantee enforcement**
 - **Education, prevention, sanctioning, and visible aggressive prosecution can only be used to remedy and eradicate this problem**
- 

State Law Activity

Coverage	Conduct	Reporting	Defenses	Penalties

